

RECEIVED

NOV 12 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)

Table of Allotments,

FM Broadcast Stations

(Athens and Doraville, GA)

)
)
)
)
)
)
)

MB Docket No. 03-190

RM-10738

ORIGINAL

REPLY COMMENTS OF INFINITY BROADCASTING CORPORATION

Infinity Broadcasting Corporation ("Infinity"), parent company of the licensees of WVEE(FM), WZGC(FM) and WAOK(AM), Atlanta, GA, hereby files Reply Comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding¹ ("NPRM") and opposes the Petition for Rule Making of Cox Radio, Inc. and CXR Holdings, Inc. (collectively referred to herein as "Cox")² to amend the FM Table of Allotments. As Infinity noted in its Comments, moving WBTS-FM's community of license to the small town of Doraville, Georgia, from Athens, Georgia constitutes nothing more than the first step in a two-step move-in for WBTS to achieve better coverage of metropolitan Atlanta area.³ It has come to Infinity's attention that Cox further seeks to accomplish its goal of providing city grade coverage to the Atlanta Urbanized Area by inducing Davis Broadcasting Inc., of Columbus ("Davis") to agree to downgrade its station, WKZJ(FM), from a Class C3 facility to a Class A facility and to

¹ *In the Matter of Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Athens and Doraville, Georgia), Notice of Proposed Rulemaking, DA 03-2714 (rel. Sept. 5, 2003) ("NPRM").*

² Petition for Rule Making of Cox Radio, Inc. and CXR Holdings, Inc. filed in MB Docket No. 03-190, RM-10738 on May 9, 2003 ("Petition").

³ Comments of Infinity Broadcasting Corp. filed in MB Docket No. 03-190, RM-10738 on Oct. 27, 2003 at 5 ("Infinity Comments").

No. of Copies rec'd
List ABCDE

014

relocate that station 31.1 kilometers south to Waverly Hall, Georgia.⁴ WKZJ's proposed relocation, which Davis and Cox requested jointly, will allow WBTS to double its coverage of the Atlanta Urbanized Area from 33% to 60.1%, which includes city grade coverage to a significant portion of the city of Atlanta and Fulton and Cobb counties and all of Dekalb County. Cox's Petition in this proceeding does not mention the significant relationship between this proceeding and the WKZJ proposal. Significantly, Cox's omission in this regard leaves the Commission with only a partial understanding of the facts and the impact of the WKZJ proposal on this proceeding.

I. COX HAS NO INTENTION OF CONTINUING TO SERVE ATHENS OR GAINESVILLE IN THE FUTURE.

On the same day that Cox filed its Petition to change WBTS's community of license from Athens, Georgia, to Doraville, Georgia, Cox and Davis filed a Joint Petition to delete Channel 239C3 at Greenville, Georgia, and to allot Channel 239A to Waverly Hall, Georgia, for use by Davis' WKZJ(FM), while proposing to reallocate Channel 281C1 from LaGrange, Georgia, to Greenville, Georgia, for use by Cox's WALR-FM. The Joint Petition provides further support that Cox intends to expand WBTS's coverage of the Atlanta Urbanized Area and to abandon the Athens and Gainesville Urbanized Areas.

Downgrading WKZJ(FM) from a Class C3 facility to a Class A facility will permit WBTS to move its transmitter even closer to Atlanta than Infinity had initially hypothesized.⁵ As the attached Engineering Statement demonstrates,⁶ if the Commission grants

⁴ See Joint Petition for Rule Making of Cox Radio, Inc., CXR Holdings, Inc. and Davis Broadcasting Inc., of Columbus, filed in RM-10813 on May 9, 2003 ("Joint Petition"); *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (LaGrange, Greenville and Waverly Hall, Georgia)*, Notice of Proposed Rulemaking, DA 03-3227 (rel. Oct. 24, 2003).

⁵ Infinity Comments at Exhibit 1.

the Joint Petition, WBTS will be positioned to subsequently move its transmitter even further west. Under the stations' current facility classifications, WBTS and WKZJ, as first adjacent channels, must be separated by 133 kilometers in order to satisfy the minimum distance separation requirements set forth in Section 73.215(e) of the Commission's rules.⁷ If, however, WKZJ is downgraded from a Class C3 facility to a Class A facility, the two stations are required to be separated by only 111 kilometers.⁸ Grant of the Joint Petition, therefore, will allow Cox to subsequently move the WBTS transmitter site further west toward Atlanta and thereby provide signal coverage to 60.1% of the Atlanta Urbanized Area.⁹

The Joint Petition, therefore, provides further evidence that Cox has no intention of serving the needs of Doraville residents, as it claims in the Petition. Rather, the Joint Petition provides additional evidence that Cox plans to abandon both the Athens and Gainesville Urbanized Areas after it completes the first step of the two-step process to move into Atlanta. Accordingly, as Infinity stated in its initial Comments, Doraville should not be entitled to a first local service preference under the Commission's FM allotment priorities. Grant of the Joint Petition will significantly improve Cox's foothold in the Atlanta radio market by positioning WBTS to serve a greater percentage of the metropolitan Atlanta population.

II. COX'S PETITION IN THE WKZJ/WALR PROCEEDING IS RELEVANT IN THIS PROCEEDING

Cox does not mention anywhere in its Petition proposing to change WBTS's community of license from Athens to Doraville, Georgia that Cox also filed a Joint Petition in which Davis (for undisclosed consideration) agreed to relocate WKZJ from Greenville to

⁶ Exhibit 1.

⁷ 47 C.F.R. § 73.215(e).

⁸ *Id.*

⁹ Exhibit 1.

Waverly Hall, Georgia, and to downgrade the facility. Cox fails to disclose to the Commission that the relocation and downgrading of WKZJ will pave the way for WBTS to move its transmitter 27.9 miles closer to Atlanta.¹⁰ These essential facts provide further support that Cox's Petition has no purpose other than to move WBTS closer to Atlanta. Without these facts the Commission does not have the full story, which limits its ability to fully assess the impact of its decision. The Commission must take judicial notice of the pleadings filed in response to the Joint Petition.

III. IF THE COMMISSION GRANTS COX'S PETITION, THE COMMISSION SHOULD CONDITION THE WBTS LICENSE ON PROVIDING A CITY GRADE SIGNAL TO ATHENS.

As noted above, the relocation and downgrading of WKZJ's facility will further facilitate WBTS' ability to achieve better coverage of metropolitan Atlanta area; however, as the Engineering Statement demonstrates and as described above, WBTS will do so at the expense of Athens and Gainesville, Georgia.¹¹ This underscores why the Commission should condition WBTS's license on WBTS continuing to provide city grade coverage to the community of Athens and on the WBTS programming continuing to meet the needs and interests of Athens residents. Otherwise, the needs of the Athens residents will not continue to be met in the future.

IV. CONCLUSION

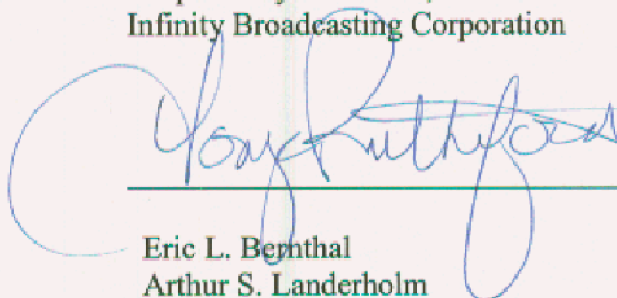
As set forth above and in Infinity's Comments, the Commission should reject the Cox proposal to change the community of license for WBTS from Athens, Georgia, to Doraville, Georgia. Cox's failure to inform the Commission that the WKZJ proposal will have a significant impact on the results of this proceeding leaves the Commission with only a partial understanding of the facts and the impact of its decision. Infinity urges the Commission to take judicial notice

¹⁰ Exhibit 1.

¹¹ See *supra* Section I.

of the pleadings filed in response to the Joint Petition. If the Commission grants Cox's Petition, it should condition the grant on WBTS continuing to provide a city grade signal to the community of Athens, GA.

Respectfully submitted,
Infinity Broadcasting Corporation

A handwritten signature in blue ink, appearing to read "Tonya Rutherford", is written over a horizontal line.

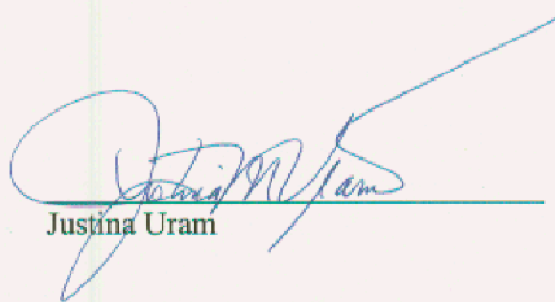
Eric L. Bernthal
Arthur S. Landerholm
Tonya Rutherford
LATHAM & WATKINS LLP
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Counsel for Infinity Broadcasting Corporation

November 12, 2003

CERTIFICATE OF SERVICE

I, Justina Uram, hereby certify that on this 12th day of November 2003, I caused copies of the foregoing Comments of Infinity Broadcasting Corporation to be sent via first class mail, postage prepaid to the following:

Kevin F. Reed
Christina H. Burrow
Nam E. Kim
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036



Justina Uram

EXHIBIT 1

Engineering Statement
WBTS COVERAGE OF ATHENS AND ATLANTA GEORGIA
prepared for
Infinity Broadcasting Corporation

This Engineering Statement comments on the Notice of Proposed Rulemaking¹ to change the principal community of Channel 238C1 at Athens, Georgia to Doraville, Georgia. Under this proposal, station WBTS would serve Doraville on channel 238C1 with no change in its technical facility. Additionally, Cox Radio, Inc. (licensee of WBTS) along with Davis Broadcasting Inc. (licensee of WKZJ), have petitioned² to downgrade station WKZJ(FM) (Facility ID 50534, Greenville, GA) from "Class C3" to "Class A³" and to relocate the facility 31.1 km to the South.

As no change in the WBTS technical facility is contemplated in the proposal, no "gain" or "loss" areas will result. In this Statement, we explore a hypothetical WBTS transmitter relocation, and evaluate the resulting "gain" and "loss" areas and population, that would be possible *only* if the allocation of Channel 238C1 at Athens, Georgia were changed to a community closer to Atlanta (in this case, Doraville, Georgia) and if protection requirements to station WKZJ were reduced (in this case, by relocating to the South and by downgrading from a "Class C3" to a "Class A" facility).

Hypothetical Site

Given that tendency of radio stations to relocate toward larger, metropolitan marketing areas, and considering the that the prospective downgrade and relocation of WKZJ would make such a move possible under the Rules, we presume that these changes have been proposed in order to relocate the WBTS facility nearer to Atlanta, Georgia under the provisions of the FCC's contour protection Rules (see §73.215).

Considering the allocations situation for WBTS (and including the changes proposed by Cox Radio Inc. and Davis Broadcasting, Inc.), we selected the following site for evaluation. The existing, 350 meter above ground level support structure at this site could facilitate the maximum height permitted for a "Class C1" facility such as WBTS. The site is uniquely described by the geographical coordinates:

34° 44' 22" North Latitude
84° 00' 14" West Longitude
FCC Antenna Registration Number 1028356

¹MB Docket No. 03-190 (RM-10738) Amendment of Section 73.202(b) FM Table of Allotments, FM Broadcast Stations. (Athens and Doraville, Georgia)

²MB Docket No. 03-223 (RM-10813) Amendment of Section 73.202(b) FM Table of Allotments, FM Broadcast Stations. (LaGrange, Greenville and Waverly Hall, Georgia)

³Additionally, the petition seeks to change the WKZJ principal community to Waverly Hall, Georgia.

Engineering Statement
WBTS COVERAGE OF ATHENS AND ATLANTA GEORGIA
(page 2 of 3)

Should the proposed changes to the table of allotments be approved, use of this site, which represents a move of 44.9 kilometers (27.9 miles) closer to Atlanta and the creation of an additional shortspacing, would be permissible under the FCC Rules. Specifically, this site would continue to be shortspaced to stations WLTN (Channel 235C1, Atlanta) and WKLS (Channel 241C0, Atlanta) which are presently "grandfathered" under §73.213(a)(4) and thus are not a limiting factor. An additional shortspacing to WASZ (Channel 238A, Hobson City, Alabama⁴) would be created. WKZJ (Channel 239A, Waverly Hall, Georgia) would be fully spaced after the proposed class downgrade and relocation. A WBTS directional antenna pattern is assumed to prevent prohibited contour overlap with WASZ from the prospective site, which meets all pertinent spacing requirements of §73.215(e).

Gain and Loss Areas

The present and hypothetical service contours are shown in the attached map. These contours were prepared using U.S.G.S. 3 arc-second terrain data, FCC field strength to distance curve algorithms and 72 evenly spaced radials in accordance with §73.313 of the FCC Rules. A digitized mapping program along with 2000 U.S. Census data were utilized to evaluate the area and population within the present and hypothetical contours:

<u>Description</u>	<u>Licensed WBTS</u>	<u>Hypothetical WBTS</u>
Within 60 dBu Contour	16,400 km ² 3,275,724 people	16,160 km ² 4,020,441 people
Within 70 dBu Contour	7,799 km ² 1,541,962 people	7,709 km ² 2,669,929 people
Athens Urbanized Area Within 70 dBu Contour	171.4 km ² (83.2%) 90,857 people	4.9 km ² (2.4%) 1,434 people
Gainesville Urbanized Area Within 70 dBu Contour	239.0 km ² (100%) 88,019 people	7.5 km ² (3.1%) 3,503 people
Atlanta Urbanized Area Within 70 dBu Contour	1,597 km ² (31.1%) 1,042,428 people	3,115 km ² (60.1%) 2,428,643 people

⁴MB Docket No. 03-77 (RM-10660, DA 03-816) proposed relocation of Ch. 238A at Ashland, AL to Hobson City, AL.

Engineering Statement
WBTS COVERAGE OF ATHENS AND ATLANTA GEORGIA
(page 3 of 3)

As is shown in the attached map, the hypothetical relocation will result in the loss of service in some areas, and the gain of service in others.

<u>Description</u>	<u>Loss Area</u>	<u>Gain Area</u>
Within 60 dBu Contour	6,533 km ² 235,600 people	6,293 km ² 980,317 people
Within 70 dBu Contour	4,399 km ² 412,500 people	4,309 km ² 1,540,467 people

Conclusion

Although relocation of the WBTS transmitter is not specifically proposed at this time, the change of principal community to Doraville, Georgia along with the downgrading and relocation of WKZJ would ease the relocation of the WBTS transmitter (by some 44.9 kilometers) as a "minor change" under the Rules some time in the future.

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction on behalf of Infinity Broadcasting Corporation and that it is true and correct to the best of his knowledge and belief. Daniel G. Ryson is employed by the firm of Cavell, Mertz & Davis, Inc. and has submitted numerous engineering exhibits to the Federal Communications Commission. His qualifications are a matter of record with the Commission.



Daniel G. Ryson
November 12, 2003

Cavell, Mertz & Davis, Inc.
7839 Ashton Avenue
Manassas, VA 20109
(703) 392-9090

